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7 United States District Court
8 Eastern District of Washington
9 (Hon. Rosanna Malouf Peterson)

10 United States of America,
11 Plaintiff,

12 v.

13 Matthew Paul Porter,
14 Defendant(s).

2:19-CR-00186-RMP

Sentencing Memorandum and Motion
for Downward Variance

15
16 **I. Introduction**

17 Matthew Paul Porter, through counsel, Zachary L. Ayers, submits the following
18 sentencing memorandum and motion for downward variance. Mr. Porter respectfully
19 requests the Court to sentence him to 36-months imprisonment, a 4-year term of
20 supervised release, no fine, and a \$200 mandatory special penalty assessment.
21

22 **II. 18 U.S.C. 3553(a)**

23 18 U.S.C. §3553 sets out factors that are helpful to the Court when determining
24 what sentence is “sufficient but not greater than necessary” to comply with the
25 purposes of the statute. The District Court may not presume that the guideline range is
26 reasonable, nor should the guideline factors be given any more or less weight than any
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28

1 other. *United States v. Carty*, 520 F.3d 984, 991 (9th Cir. 2008) *en banc*, citing *Rita v. United*
 2 *States*, 127 S.Ct. 2456 (2007), *Gall v. United States*, 127 S.Ct. 2833 (2007), and *Kimbrough*
 3 *v. United States*, 128 S.Ct. 558 (2007). The guidelines are only one factor to be taken
 4 into account in arriving at an appropriate sentence. *Id.*

6 **Nature of the Offense**

7 This offense is serious. Mr. Porter understands that the offense he committed
 8 affects the public at large. Controlled substances poison the community
 9 psychologically, physically, and financially. Although he collected firearms, he
 10 understands that those firearms are illegal in nature. Each of these issues harmed the
 11 physical as well as emotional well-being of his family and fiancé.

14 **The History and Characteristics of the Defendant**

15 Mr. Porter's life is one of significant sadness and uplifting life events. Mr. Porter
 16 has lived in Eastern Washington most of his life. He has never met his father (PSIR
 17 ¶97-98).

19 He dated Ashley Robinson, the mother of Mr. Porter's oldest son in the mid-
 20 2000's. (PSIR ¶111). She died of a blood clot in her brain in 2007. (PSIR ¶111). Her
 21 passing sunk Mr. Porter into a place of despair that affects him to this day. His right
 22 leg has a tattoo with Ms. Robinson's initials and birth date.

24 This case is Mr. Porter's first and, hopefully, only conviction. His time at pretrial
 25 intensive inpatient treatment opened his eyes to how he was harming himself and his
 26 fiancé. That experience affected him so much that he helped get his fiancé clean and
 27
 28

1 sober for the birth of their child.

2 **To Promote Respect for the Law**

3
4 A sentence of 36 months promotes respect for the law. By the time of
5 sentencing, Mr. Porter will have been incarcerated for almost one year.

6 Intensive inpatient treatment taught Mr. Porter the damaging effects of his drug
7 addiction. It taught him how it was hurting others and almost led him to overdosing.
8 It hurt his family, his fiancé, and his children.
9

10 **To Afford Adequate Deterrence to Criminal Conduct**

11 A sentence of 36 months will deter criminal conduct. The anticipated
12 supervised release conditions will help to deter future criminal conduct.
13

14 “Generally, a lesser period of imprisonment is required to deter a defendant not
15 previously subject to lengthy incarceration than is necessary to deter a defendant who
16 has already served serious time yet continues to offend.” *United States v. Quails*, 373
17 F.Supp.1d 873 (E.D. Wis. 2005). “If a defendant served no time or only a few months
18 for prior offenses, a sentence of even 3 or 5 years for the current offenses might be
19 expected to have the requisite deterrent effect.” *United States v. Mishoe*, 241 F.3d 214
20 (2nd Cir. 2001).
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23 Mr. Porter’s is in criminal history Category 1. He has never served a prison
24 sentence before. A sentence of more than 36 months would have the opposite effect
25 considering he is now sober. Inpatient treatment has changed Mr. Porter’s entire view
26 of controlled substances and the harm it caused him and his family.
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1 **Protection of the Public**

2 A sentence of 36 months with 4 years of supervised release will satisfy this
3
4 factor as well. Mr. Porter agrees with and intends to follow the standard and special
5 conditions of release recommended in the PSIR. It is his goal to maintain sobriety for
6 the rest of his life.

7
8 **III. Motion for Downward Variance**

9 Mr. Porter seeks a downward variance from the 87-108 months range of
10 imprisonment to 36 months. His fiancé has endured substance addiction. She saw the
11 positive changes that Mr. Porter has taken and mirrors those same changes to be clean
12 and sober.

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14 With a mental health evaluation and potential treatment, Mr. Porter will be able
15 to correct many of the challenges he faces mentally, physically, and emotionally.
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17 Having a newborn to take care of and reestablishing his relationship with his oldest
18 son are his motivations to maintain sobriety and not commit further crimes.

19 Additionally, the guideline range in the pre-sentence report overstates the
20 potential sentence. “Additionally, prior to this offense, Mr. Porter had never been
21 incarcerated; therefore, a sentence less than the low end of the guideline range may be
22 sufficient to deter further criminal conduct, promote respect for the law, while
23 reflecting on the seriousness of the offense.” (PSIR ¶179). Mr. Porter’s lack of criminal
24 history before this case is telling for someone who is 40-years old. It is unlikely that he
25 will reoffend in the future.
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Service Certificate

I hereby certify that on May 10, 2021, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF System which will send notification of such filing to the following: Assistant United States Attorney Richard Barker.

s/ Zachary L. Ayers
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